

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

ROY LASSITER, JENNIFER
PURIFOY,

Plaintiffs,

V.

PACIFICARE LIFE AND HEALTH INSURANCE COMPANY, UNITED HEALTHCARE SERVICES, INC., as successor in interest to PacifiCare Life & Health Company; ROBERT D. BELL and Fictitious Defendants "A" through "R",

Defendants.

~~~~~

CIVIL ACTION NO. 2:07-CV-00583

**DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO STAY OR ABATE PROCEEDINGS AND COMPEL ARBITRATION**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants PacifiCare Life and Health Insurance Company and United HealthCare Services, Inc., (together, “PacifiCare”), file this Reply to Plaintiffs’ Opposition to Defendants’ Motion to Stay or Abate Proceedings and Compel Arbitration, as follows.

## 1. BACKGROUND

This lawsuit was originally filed in the Circuit Court of Bullock County, Alabama on May 23, 2007. On June 25, 2007, PacifiCare timely removed this action based on federal question jurisdiction. A few days later, on June 29, 2007, PacifiCare filed its Motion to Stay or Abate Proceedings and Compel Arbitration (hereinafter the “Motion to Compel Arbitration”). Nearly three weeks later, on July 17, 2007, Plaintiffs filed their Motion to Remand this suit to Bullock County.

## **2. AGREEMENT TO ABATE MOTION**

2.1 PacifiCare is in agreement with Plaintiffs that the Court should first rule on Plaintiffs' Motion to Remand and determine whether federal jurisdiction exists before considering PacifiCare's Motion to Compel Arbitration.

2.2 It is important to note that Defendants did not file their Motion to Compel Arbitration in order to circumvent this Court's determination of its subject matter jurisdiction. In fact, Plaintiffs' Motion to Remand was filed with this Court almost three weeks *after* PacifiCare filed its Motion to Compel Arbitration. Rather, PacifiCare filed its Motion to Compel Arbitration to timely raise the issue with the Court and to avoid any possible argument that PacifiCare had waived any right to invoke the applicable contractual arbitration provisions. As Plaintiffs now seek remand (which should be denied), the Court should first rule on the Motion to Remand before addressing the instant motion.

WHEREAS, PREMISES CONSIDERED, in the interest of judicial economy, PacifiCare respectfully requests this Court to temporarily defer consideration of Defendants' Motion to Stay or Abate Proceedings and Compel Arbitration and hold such motion in abeyance until such time as the Court rules on Plaintiff's Motion to Remand.

DATED: July 25, 2007.

Respectfully submitted,

s/ William C. McGowin

Philip H. Butler (BUT007)

George B. Harris (HAR138)

William C. McGowin (MCG040)

OF COUNSEL

Bradley Arant Rose & White LLP  
The Alabama Center for Commerce  
401 Adams Avenue, Suite 780  
Montgomery, AL 36104  
Telephone: (334) 956-7700  
Facsimile: (334) 956-7701

Paula Denney  
Texas State Bar No. 05746950  
John K. Edwards  
Texas State Bar No. 24002040  
JACKSON WALKER L.L.P.  
1401 McKinney, Suite 1900  
Houston, Texas 77010  
Phone: 713-752-4200  
Fax: 713-752-4221

ATTORNEYS FOR DEFENDANTS  
PACIFICARE LIFE AND HEALTH  
INSURANCE COMPANY and UNITED  
HEALTHCARE SERVICES, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on July 25, 2007, I electronically filed the foregoing Defendants' Reply to Plaintiffs' Opposition to Defendants' Motion to Stay or Abate and Compel Arbitration with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Robert G. Methvin, Jr.  
J. Matthew Stephens  
Rodney E. Miller  
*McCallum, Methvin & Terrell, P.C.*  
The Highland Building  
2201 Arlington Avenue South

*Attorney for Plaintiffs*

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Robert D. Bell  
Route 1, Box 995  
Shellman, Georgia, 39886

s/ William C. McGowin  
\_\_\_\_\_  
Of Counsel